

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 958 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

V.N.JOSHI

Versus

PRINCIPAL,

Appearance:

MR BP TANNA for Petitioner
MR VM PANCHOLI AGP for Respondent No. 1
MR TH SOMPURA for Respondent No. 2, 3, 4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 03/03/2000

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner before this court is an Assistant

Teacher. He was appointed as an Assistant Teacher in Sheth M.P.Girls' High School, Veraval, a Government Secondary School by order dated 24th August, 1977 made by the District Education Officer, the respondent no.2 herein in the time scale of pay of Rs. 440-750. The petitioner claims that he is entitled to a higher scale of Rs.550-900 with effect from 1st July, 1979, and of Rs. 1640-2900 with effect from 1st January, 1986. It is admitted that pending this petition, the said payscale of Rs.1640-2900 has been sanctioned to the petitioner with effect from 1st January, 1986. However, according to the petitioner, the pay fixation has not been done in time scale of pay of Rs. 550-900 as required under Government Resolution dated 18th January, 1989.

The facts leading to the present petition are -

Under its Resolution dated 28th October, 1975, the Government with effect from the academic year 1976-1977 introduced educational reform in as much as hitherto secondary education from Stds. VIII to XI was extended to Stds. VIII to XII. The secondary education was further bifurcated in the secondary education and the higher secondary education i.e. classes from Stds. VIII to X were considered to be secondary education, and classes of Stds. XI and XII were included in the higher secondary education. The revised system of education is popularly known as 10+2+3 system. With the introduction of the higher secondary education in the schools, a need for larger number of teachers who could teach the higher secondary students i.e. Stds. XI and XII students arose. To meet the said requirement, on 1st August, 1977, the Joint Director of Education sanctioned additional posts of Assistant Teachers. Under the said order, six posts of Assistant Teachers were sanctioned for Sheth M.P.Girls' High School, Veraval. It is the claim of the petitioner that pursuant to the said sanction, the concerned District Education Officer had appointed the petitioner as an Assistant Teacher on 24th August, 1977 for higher secondary classes. The petitioner possessed qualifications of B.Sc. II & B.Ed. III. Under the said Resolution dated 28th October, 1975, the Government also prescribed the necessary qualifications for appointment of teaching staff in the higher secondary section. The qualifications prescribed were (a) a trained teacher having II class Master's Degree in the respective subject, or (b) a trained graduate teacher who has 7 years' experience of teaching the concerned subject in Stds. X & XI, by selection. Admittedly, the petitioner did not possess either of the above referred qualifications i.e. he did not possess

the Master's Degree, nor did he have the experience of teaching. Nonetheless, it is undisputed that all along the petitioner was teaching in the higher secondary section. At the relevant time, a common payscale of Rs. 440-750 was prescribed for the teachers teaching in the secondary section as well as in the higher secondary section. However, the teachers teaching in the higher secondary section were entitled to a special allowance which, indisputably, the petitioner has received. It appears that on 18th January, 1989, the Government passed a Resolution whereunder a higher payscale of Rs. 550-900 was sanctioned to the higher secondary school teachers with effect from 1st July, 1979. It was resolved that the said pay scale would be available to the higher secondary school teachers notionally and having fixed the pay of the higher secondary school teachers in the payscale of Rs. 550-900 as on 31st December, 1985, the higher secondary school teachers would be entitled to higher payscale of Rs. 1640-2900 with effect from 1st January, 1986. The said Resolution was further clarified by the Resolution dated 8th December, 1989 (Annexure-J to the petition). It was clarified, inter alia, that the higher secondary teachers possessing lesser (LAGHU) qualifications if appointed prior to 1st July, 1979, shall be entitled to the notional pay in the payscale of Rs. 550-900 from 1st July, 1979 to 31st December, 1985 and on 1st January, 1986, their pay should be fixed in the time scale of Rs. 1640-2900. The words 'lesser (LAGHU) qualification' have been explained in the Circulars dated 24th April, 1990 and 7th July, 1990. In the Circular dated 24th April, 1990, the words 'lesser (LAGHU) qualification' have been explained to mean trained post graduate III, or trained Graduate with an experience of less than 7 years. The said clarification has been further explained in the Circular dated 7th July, 1990. It is mentioned therein that appointment of the higher secondary teacher not possessing the requisite qualification was required to be sanctioned by the "10+2 Division of the Directorate of Education". However, prior to 1981-82, several such teachers were appointed by the District Education Officers without prior sanction of the Directorate (10+2 Division). It was, therefore, instructed that the concerned District Education Officer shall send the names of such teachers in the prescribed proforma to get the required sanction. But by the Resolution dated 8th October, 1990, the Government appears to have modified its earlier policy. The said Resolution provides that the trained Post Graduates should be preferred for the higher secondary school. It further provides that those who do not possess qualification of trained Post Graduation and who are

trained Graduates shall be regularised as higher secondary teachers after completion of 7 years' teaching experience or from the date they acquire the Post Graduate qualification. It is further clarified that the above referred concession was granted to only those higher secondary teachers whose appointments were approved by the Joint Director of Education (10+2 Special Division). This Resolution is followed by the Circular dated 20th December, 1991, issued by the State Government. The word 'lesser (LAGHU) qualification' occurring in the Resolution dated 18th December, 1989, is once again explained as "trained Post Graduate Pass Class teachers" or "trained Graduate teachers". Pursuant to the said Resolution, necessary instructions to make pay fixation in accordance with the said Resolution have been issued by the Joint Director of Education to the respondent no.2 herein. By order dated 28th October, 1998, orders regarding necessary pay fixation in respect of 43 such higher secondary teachers have been made by the respondent no.2. Accordingly, the petitioner has been sanctioned the benefit of the higher payscale of Rs. 550-900 with effect from 1st September, 1984. The said order is yet to be implemented.

It is contended that indisputably on the date of his appointment, the petitioner did not possess the qualification of Master's Degree, nor did he possess the requisite 7 years' teaching experience and, therefore, he was not eligible for appointment to the post of higher secondary teacher, nor his appointment was sanctioned by the Joint Director of Education (10+2 Special Division) as required. Thus, the petitioner is not entitled to the higher payscale of Rs. 550-900 before he acquired requisite qualification for appointment to the post of secondary school teacher i.e. the petitioner acquired seven years' teaching experience in the year 1984 and accordingly he has been sanctioned higher scale of pay with effect from 1st September, 1984.

In my view, the defence is not acceptable. The Government Resolution dated 8th October, 1990, though has taken note of its earlier Resolution dated 28th October, 1975, does not take note of its previous Resolutions of 18th January, 1989 and of 8th December, 1989. The said Resolutions were issued pursuant to the demand made by the higher secondary teachers and accepted by the Government. It is categorically provided that even those teachers who did not possess the requisite qualifications if appointed prior to 1st July, 1979, shall be entitled to notional pay fixation in the higher scale of pay of Rs.550-900 with effect from 1st July, 1979 till 31st

December, 1985. As discussed hereinabove, the expression 'lesser (LAGHU) qualification' occurring in the said Resolution dated 8th December, 1989, was clarified in the Circulars dated 24th April, 1990 and 7th July, 1990, issued by the Joint Director of Education (10+2 Special Division). It is apparent that the aforesaid Resolution dated 8th December, 1989 and the Circulars dated 24th April, 1990 and 7th July, 1990 have not been considered by the State Government while issuing the Resolution dated 8th October, 1990. In my view, in the above referred Resolution dated 8th December, 1989 and the Circulars dated 24th April, 1990 and 7th July, 1990 and also the Circular dated 20th December, 1991, the Government's intention is clearly spelt out. The Government was conscious of the fact that upon introduction of educational reform i.e. 10+2 system, the teachers possessing the requisite qualifications for higher secondary schools may not be available and many a teachers not possessing the requisite qualifications were appointed by the concerned District Education Officers, and such teachers had infact all along taught the higher secondary students. That is why the Government sanctioned higher pay scale to them also with effect from 1st July, 1979, provided their appointments were sanctioned by the Directorate of Education (10+2 Special Division). Considering that many such teachers may have been appointed without securing such sanction, the Government, by its Circular dated 7th July, 1990, issued specific instructions to all the District Education Officers to secure such sanction by furnishing information in the prescribed proforma i.e. even if such sanction were not obtained at the relevant time, the Directorate would consider such appointments and would grant ex-post-facto-sanction. Further, even after the Resolution dated 8th October, 1990, the Government by its Circular dated 20th December, 1991, reiterated the above referred policy decision. It is, thus, apparent that while issuing the Resolution dated 8th October, 1990, the Government without considering its previous policy, took an about-turn and directed that the higher secondary teachers would be entitled to the higher scale of pay only after acquiring the requisite qualifications. The Resolution dated 8th October, 1990, is clearly contrary to the earlier policy spelt out in the Resolution dated 8th December, 1989 and clarified/explained by the Circulars dated 24th April, 1990, 7th July, 1990 and even that of 20th December, 1991. Neither the Government has referred to its earlier policy, nor its intention to alter the same, nor it has superseded its earlier policy. I am, therefore, of the opinion that the Government's policy spelt out in the above Resolution dated 8th

December, 1989, and clarified/explained by the subsequent Circulars shall prevail over the latter Resolution of 8th October, 1990.

It is however not known whether pursuant to the Circular dated 7th July, 1990, the respondent no.2 had recommended the case of the petitioner to the Joint Director of Education (10+2 Special Division) for approval. Even if it is not done, it is too late in the day to deny the benefit conferred upon the petitioner and such others under the Resolution dated 8th December, 1989. In any view of the matter, it was the duty of the District Education Officer to seek previous sanction. If he failed to secure such sanction, the teacher concerned can not be made to suffer the loss.

In view of the above discussion, I hold that the petitioner is entitled to the benefit of the Government Resolutions dated 18th January, 1989 and 8th December, 1989, and the clarification made in the Circulars dated 24th April, 1990 and 7th July, 1990, and 20th December, 1991. The petitioner is, accordingly, entitled to notional pay fixation in the higher scale of pay of Rs. 550-900 for the period from 1st July, 1979 to 31st December, 1985. His pay in the scale of Rs. 1640-2900 with effect from 1st January, 1986, requires to be revised accordingly. The petitioner is also entitled to the arrears of salary commencing from 1st January, 1986. However, if the petitioner has been paid any amount by way of special allowance, the same shall be adjusted against the amount which may be found to be due and payable. Mr. Tanna has also claimed interest on the amount of arrears of salary on account of delay which has been caused for no fault of the petitioner. I believe that this delay has occurred on account of various modifications and clarifications issued time and again. I, therefore, do not consider it to be a case fit for awarding interest. The exercise of revising the pay of the petitioner shall be completed within a period of four weeks from today and the payment of the amount of difference of salary shall be made within a period of four weeks thereafter.

Petition is, accordingly, allowed. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

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